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MARVA SAMUEL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARVA SAMUEL,

Plaintiff,

v.

FITNESS INTERNATIONAL, LLC, dba
CITY SPORTS CLUB; NATIONAL
RETAIL PROPERTIES, INC.; AND
DOES 1-20, INCLUSIVE,

Defendants.

CASE NO.
Civil Rights

COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF AND
DAMAGES: DENIAL OF CIVIL RIGHTS AND
ACCESS TO PUBLIC FACILITIES TO
PHYSICALLY DISABLED PERSONS, PER
FEDERAL AND CALIFORNIA STATUTES
(including CIVIL CODE §§ 51, 52, 54, 54.1, 54.3
and 55; and HEALTH & SAFETY CODE §§
19953 *et seq.*); INJUNCTIVE RELIEF PER
TITLE III, AMERICANS WITH DISABILITIES
ACT OF 1990 (including 42 USC §§ 12181 *et*
seq.)

DEMAND FOR JURY TRIAL

Plaintiff MARVA SAMUEL complains of Defendants FITNESS INTERNATIONAL,
LLC, dba CITY SPORTS CLUB; NATIONAL RETAIL PROPERTIES, INC.; AND DOES 1-20,
INCLUSIVE, and each of them, and alleges as follows:

1. **INTRODUCTION:** This case involves barriers to disabled access that prevented
and continues to prevent disabled Plaintiff MARVA SAMUEL from fully accessing the fitness
center known as City Sports Club except under discriminatory and physically painful conditions.
Among other barriers, she is barely able to open doors to enter the facility. She must rely on
strangers to open the door for her. Staff at the front desk apparently refuse to assist her despite
seeing through the glass doors her struggle to open them. She also cannot access the pool area

1 without straining her shoulder because the door is excessively heavy and either impossible or
2 extremely difficult for her to access on her own. The door also does not have sufficient clearance
3 from the strike edge of the door. Plaintiff must maneuver several times in her wheelchair to have
4 enough space to open it without her chair interfering, opening it a little wider each time she
5 moves her chair.

6 2. Defendants denied disabled Plaintiff MARVA SAMUEL accessible public
7 facilities, including paths of travel at the City Sports Club ("Fitness Center") located at 5100
8 Lone Tree Way, Antioch, California. Plaintiff MARVA SAMEUL is a "person with a disability"
9 or "physically handicapped person" who requires the use of a motorized wheelchair, cane or other
10 assistive devise for locomotion and is unable to use portions of public facilities which are not
11 accessible to mobility disabled persons. On or about August 15, 2018, Plaintiff was denied her
12 rights to full and equal access at the Fitness Center. She was denied her civil rights under both
13 California law and federal law, and continues to have her rights denied, because these facilities
14 were not, and are not now, properly accessible to physically disabled persons, including those
15 who use assistive devices for mobility.

16 3. Plaintiff seeks injunctive relief to require Defendants to make these facilities
17 accessible to disabled persons and to ensure that any disabled person who attempts to patronize
18 the subject premises will be provided accessible facilities. Plaintiff also seeks recovery of
19 damages for her discriminatory experiences and denial of access and of civil rights, which denial
20 is continuing as a result of Defendants' failure to provide disabled accessible facilities. Plaintiff
21 also seeks recovery of reasonable statutory attorney fees, litigation expenses and costs, under
22 federal and state law.

23 4. **JURISDICTION:** This Court has jurisdiction of this action pursuant to 28 USC
24 section 1331 for violations of the Americans with Disabilities Act of 1990, 42 USC
25 sections 12101 *et seq.* Pursuant to pendant jurisdiction, attendant and related causes of action
26 arising from the same facts are also brought under California law, including but not limited to
27 violations of Health & Safety Code sections 19953-19959; California Civil Code sections 51, 52,
28 54, 54.1, 54.3 and 55; and Title 24 California Code of Regulations, the California State Building

1 Code.

2 5. **VENUE:** Venue is proper in this court pursuant to 28 USC section 1391(b) and is
3 founded on the fact that the real property which is the subject of this action is located in this
4 district and that Plaintiff's causes of action arose in this district.

5 6. **INTRADISTRICT:** This case should be assigned to the Oakland intradistrict as
6 the real property which is the subject of this action is located in this intradistrict and Plaintiff's
7 causes of action arose in this intradistrict.

8 7. **PARTIES:** Plaintiff is a qualified physically disabled person who must use a
9 wheelchair, cane, walker or other assistive devices for ambulation due to multiple disabling
10 physical conditions, which include but are not limited to multiple surgeries on her leg including
11 placing certain hardware to support her bones, osteoarthritis, and degenerative disc disease.
12 Despite surgeries, Plaintiff's ability to ambulate has been severely impacted. Prior to the
13 incidents described herein, Plaintiff had been issued California disabled license plates which
14 entitles her to park in a properly configured disabled accessible parking space.

15 8. Defendants FITNESS INTERNATIONAL, LLC, dba CITY SPORTS CLUB;
16 NATIONAL RETAIL PROPERTIES, INC.; AND DOES 1-20, INCLUSIVE, are and were the
17 owners, operators, lessors and/or lessees of the subject business, property and buildings at all
18 times relevant to this Complaint. Plaintiff is informed and believes that each of the Defendants
19 herein is the agent, employee or representative of each of the other Defendants, and performed all
20 acts and omissions stated herein within the scope of such agency or employment or representative
21 capacity and is responsible in some manner for the acts and omissions of the other Defendants in
22 proximately causing the damages complained of herein.

23 9. The City Sports Club is a place of "public accommodation" and "business
24 establishment" subject to the requirements of multiple categories of 42 USC section 12181(7) of
25 the Americans with Disabilities Act of 1990; of California Health & Safety Code sections 19953
26 *et seq.*; of California Civil Code sections 51 *et seq.*; and of California Civil Code sections 54 *et*
27 *seq.* On information and belief, the City Sports Club and its facilities were built after July 1,
28 1970, and since then have undergone construction and/or "alterations, structural repairs, or

1 additions,” subjecting each such facility to disabled access requirements per Health & Safety
2 Code sections 19955-19959 *et seq.*, and, as to construction and/or alterations since January 26,
3 1993, to the disabled access requirements of section 12183 of the Americans with Disabilities Act
4 of 1990. Such facilities constructed or altered since 1982 are also subject to “Title 24,” the
5 California State Architect’s Regulations, also known as the California Building Code. Further,
6 irrespective of the alteration history, such premises are subject to the “readily achievable” barrier
7 removal requirements of Title III of the Americans With Disabilities Act of 1990, as defined by
8 the ADA. 42 USC § 12181(9). Further, Plaintiff’s claims relate to discriminatory policies and
9 practices, as well as encountering architectural barriers.

10 10. The true names and capacities of Defendants Does 1 through 20, Inclusive, are
11 unknown to Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff is
12 informed and believes that each of the Defendants herein designated as a Doe is legally
13 responsible in some manner for the events and happenings herein referred to and caused injury
14 and damages proximately thereby to Plaintiff; Plaintiff prays leave of Court to amend this
15 Complaint to show such true names and capacities when the same have been ascertained.

16
17 **FIRST CAUSE OF ACTION:**
18 **DAMAGES AND INJUNCTIVE RELIEF**
19 **FOR DENIAL OF FULL AND EQUAL ACCESS TO PUBLIC FACILITIES IN A**
20 **PUBLIC ACCOMMODATION**
21 **(California Health & Safety Code §§ 19955 *et seq.*, Civil Code §§ 54 *et seq.*)**

22 11. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
23 the factual allegations contained in Paragraphs 1 through 10, above, and incorporates them herein
24 by reference as if separately replied hereafter.

25 12. Plaintiff MARVA SAMUEL and other similarly situated physically disabled
26 persons, including those who require the use of an assistive device for ambulation, are unable to
27 use public facilities on a “full and equal” basis unless each such facility is in compliance with the
28 provisions of California Health & Safety Code sections 19955 -19959. Plaintiff is a member of
that portion of the public whose rights are protected by the provisions of Health & Safety Code
sections 19955 *et seq.* Further, Plaintiff is also protected against policy and architectural barrier

1 discrimination by California Civil Code sections 54 and 54.1, the “Disabled Persons Act.”
2 “Individuals with disabilities or medical conditions have the same right as the general public to
3 the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical
4 facilities, including hospitals, clinics, and physicians’ offices, public facilities, and other public
5 places.” Civil Code § 54(a). Furthermore, “Individuals with disabilities shall be entitled to full
6 and equal access, as other members of the general public, to accommodations, advantages,
7 facilities, . . . places of public accommodation, amusement, or resort, and other places to which
8 the general public is invited.” Civil Code § 54.1(a). Additionally, any violation of the ADA,
9 including but not limited to any violation of 42 USC sections 12182 and 12183, is also
10 incorporated as a violation of the Disabled Persons Act. Civil Code §§ 54(c), and 54.1(d).

11 13. Title 24, California Code of Regulations, formerly known as the California
12 Administrative Code and now also known as the California Building Code, was in effect at the
13 time of each alteration which, on information and belief, occurred at such public facility since
14 January 1, 1982, thus requiring access complying with the specifications of Title 24 whenever
15 each such “alteration, structural repair or addition” was carried out. On information and belief,
16 Defendants and/or their predecessors in interest carried out new construction and/or alterations,
17 structural repairs, and/or additions to such buildings and facilities during the period Title 24 has
18 been in effect. Further, Plaintiff alleges, on information and belief, that construction, alterations,
19 structural repairs, and/or additions which triggered access requirements at all relevant portions of
20 the City Sports Club, also occurred between July 1, 1970, and December 31, 1981, and required
21 access pursuant to the A.S.A. (American Standards Association) Regulations then in effect,
22 pursuant to the incorporated provisions of California Government Code sections 4450 *et seq.*
23 Further, on information and belief, additions to the building after the initial construction also
24 occurred after January 1, 1972, triggering access requirements per Health and Safety Code section
25 19959, and as to alterations or additions after January 26, 1993, triggering ADA liability and
26 requirements per 42 USC sections 12182 and 12183 of the ADA.

27 14. **FACTUAL STATEMENT:** Plaintiff MARVA SAMUEL is a person with a
28 mobility disability. On August 15, 2018, Plaintiff MARVA SAMUEL arrived by wheelchair at

1 the Fitness Center intending to use the swimming pool. As she moved in front of the glass entry
2 doors, she saw staff inside the building at the front desk. She attempted to open the door but
3 could not do so due to its excessive weight. While Plaintiff struggled to open the door, staff did
4 not come to open the door for her. Eventually another patron who was unknown to Plaintiff
5 opened the door for her. She entered, embarrassed by having to rely on a stranger for help.

6 15. Once inside she approached the front desk to register. There was no lowered
7 section immediately apparent to Plaintiff. The surface of the desk was at eye level. Plaintiff had
8 to present her membership by passing her phone upward to the desk person who took it from
9 above Plaintiff. This caused Plaintiff further embarrassment at not being able to transact business
10 like other patrons. After checking in, Plaintiff noticed a somewhat lower section of the counter
11 on the other side of the desk, but this lowered section was filled with various forms of exercise
12 accoutrement which rendered it unusable.

13 16. Plaintiff proceeded to the locker room to change into her swimwear. When she
14 traveled from the locker room to the pool area, she encountered a door. This door was also
15 excessively heavy and Plaintiff experienced extreme difficulty in opening it. The clearance from
16 the wall to the door's strike edge was too short. Consequently, Plaintiff had to repeatedly
17 maneuver back and forth while pulling the door open to gain sufficient space for her wheelchair
18 not to block her efforts to open the door and pass through. Plaintiff was unsuccessful. A
19 passerby saw her experiencing extreme difficulty and opened the door for her. Again, Plaintiff
20 felt humiliated at having to rely on a stranger to perform an activity as basic as opening a door.

21 17. Plaintiff has a shoulder disability from previous injury. Each time Plaintiff uses a
22 door in the facility, she strains her shoulder to open it and it causes her pain. She risks worsening
23 its condition when she uses the doors.

24 18. Plaintiff was finally able to get into the pool area and use the pool. After using the
25 pool, she spoke with a staff member and complained about the condition of the door. Staff told
26 her a "request to corporate" had been made to install automatic door openers, but no action was
27 ever taken. After finishing her conversation with the staff member, Plaintiff was able to push the
28 door to exit the pool area with some difficulty by pushing her wheelchair into it. This brought her

1 unwanted attention because of the scraping noise it made. She then exited the facility and went
2 home.

3 19. On or about August 22, 2018, Plaintiff returned to the facility intending to use the
4 exercise equipment. She again could not open the door herself, and had to rely on a stranger to
5 open it for her. Again, she saw a staff member inside looking at her who did not come to assist
6 with opening the door. Once inside, she wanted to use some of the exercise machines upstairs.
7 On information and belief, there was insufficient area provided for Plaintiff to transfer from her
8 wheelchair to the exercise equipment. There were also insufficiently wide aisles for travel
9 between differing types of machines. Unable to use the equipment she preferred to use, Plaintiff
10 left the premises.

11 20. The above referenced barriers to access are listed without prejudice to Plaintiff
12 citing additional barriers to access by an amended complaint after inspection by Plaintiff's access
13 consultant. *Oliver v. Ralphs Grocery Co.*, 654 F.3d 903 (9th Cir. 2011); *Doran v. 7-Eleven, Inc.*
14 524 F.3d 1034 (9th Cir. 2008); *Chapman v. Pier One Imports (USA), Inc.*, 631 F.3d 939 (9th Cir.
15 2011). All of these barriers to access render the premises inaccessible to physically disabled
16 persons who are mobility impaired, such as Plaintiff, and are barriers Plaintiff may encounter
17 when she returns to the premises, including parking facilities. All facilities must be brought into
18 compliance with all applicable federal and state code requirements, according to proof.

19 21. Further, each and every violation of the Americans With Disabilities Act of 1990
20 also constitutes a separate and distinct violation of California Civil Code section 54(c), thus
21 independently justifying an award of damages and injunctive relief pursuant to California law,
22 including but not limited to Civil Code sections 54.3 and 55.

23 22. Further, each and every violation of the Americans With Disabilities Act of 1990
24 also constitutes a separate and distinct violation of California Civil Code section 54.1(d), thus
25 independently justifying an award of damages and injunctive relief pursuant to California law,
26 including but not limited to Civil Code sections 54.3 and 55.

27 23. **INJUNCTIVE RELIEF:** Plaintiff seeks injunctive relief to prohibit the acts and
28 omissions of Defendants as complained of herein which are continuing on a day-to-day basis and

1 which have the effect of wrongfully excluding Plaintiff and other members of the public who are
2 physically disabled, including but not limited to wheelchair users, from full and equal access to
3 these public facilities. Such acts and omissions are the cause of humiliation and mental and
4 emotional suffering of Plaintiff in that these actions continue to treat Plaintiff as an inferior and
5 second-class citizen and serve to discriminate against her on the sole basis that she is a person
6 with disabilities who requires the use of a wheelchair, cane or other assistive devices for
7 movement in public places.

8 24. Plaintiff is unable, so long as such acts and omissions of Defendants continue, to
9 achieve equal access to and use of these public facilities. Plaintiff continues to use the City
10 Sports Club and its facilities because exercising in a pool is the best rehabilitation for her at this
11 time, and the facilities are conveniently close to her home. However, Plaintiff experiences
12 difficulty, discomfort and embarrassment each time she visits the facilities, and she will continue
13 to be discriminated against each and every time she uses the City Sports Club until these facilities
14 are made properly accessible for disabled persons, including Plaintiff and other mobility disabled
15 persons. Plaintiff alleges that she will continue to use the facilities once legally required access
16 has been provided. However, she has been and continues to be deterred from more frequent use
17 of the facilities because of the access problems she faces each time she visits.

18 25. The acts of Defendants have proximately caused and will continue to cause
19 irreparable injury to Plaintiff if not enjoined by this Court. Plaintiff seeks injunctive relief as to
20 all inaccessible areas of the premises that she has personally encountered, and, as to all areas
21 identified during this litigation by Plaintiff's access consultant, that she or other physically
22 disabled persons may encounter in the future. *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034 (9th Cir.
23 2008); *Chapman v. Pier One Imports (USA), Inc.*, 631 F. 3d 939 (9th Cir. 2011); *Oliver v. Ralphs*
24 *Grocery Co.*, 654 F.3d 903 (9th Cir. 2011). As to those of the Defendants that currently own,
25 operate, and/or lease (from or to) the subject premises, Plaintiff seeks preliminary and permanent
26 injunctive relief to enjoin and eliminate the discriminatory practices and barriers that deny full
27 and equal access for disabled persons, and for reasonable statutory attorney fees, litigation
28 expenses and costs.

1 26. Wherefore Plaintiff asks this Court to preliminarily and permanently enjoin any
2 continuing refusal by Defendants to grant full and equal access to Plaintiff in the ways
3 complained of and to require Defendants to comply forthwith with the applicable statutory
4 requirements relating to access for disabled persons. Such injunctive relief is provided by
5 California Health & Safety Code section 19953 and California Civil Code section 55, California
6 Business & Professions Code sections 17200 *et seq.*, and other law. Plaintiff further requests that
7 the Court award damages pursuant to Civil Code section 54.3 and other law and attorney fees,
8 litigation expenses, and costs pursuant to Health & Safety Code section 19953, Civil Code
9 sections 54.3 and 55, Code of Civil Procedure section 1021.5 and other law, all as hereinafter
10 prayed for.

11 27. **DAMAGES:** As a result of the denial of full and equal access to the described
12 facilities and due to the acts and omissions of Defendants and each of them in owning, operating,
13 leasing, constructing, altering, and maintaining the subject facilities, Plaintiff has suffered a
14 violation of her civil rights, including but not limited to rights under Civil Code sections 54 and
15 54.1, and has suffered difficulty, discomfort and embarrassment, and physical, mental and
16 emotional personal injuries, all to her damages per Civil Code section 54.3, including general and
17 statutory damages, and treble damages, as hereinafter stated. Defendants' actions and omissions
18 to act constitute discrimination against Plaintiff on the basis that she was and is physically
19 disabled and unable, because of the architectural and other barriers created and/or maintained by
20 the Defendants in violation of the subject laws, to use the public facilities on a full and equal basis
21 as other persons. The violations have deterred Plaintiff from returning to attempt to patronize the
22 City Sports Gym as often as she would like and will continue to cause her damages each day
23 these barriers to access continue to be present.

24 28. **TREBLE DAMAGES:** Plaintiff has been damaged by Defendants' wrongful
25 conduct and seeks the relief that is afforded by Civil Code sections 54, 54.1, and 54.3. At all
26 times herein mentioned, Defendants were fully aware that significant numbers of potential users
27 of their public facilities were and are and will be physically disabled persons, including
28 wheelchair users and other mobility-impaired persons, and would have need of facilities that

1 complied with California Title 24 and ADAAG standards for accessible facilities. Despite this
2 knowledge, Defendants installed and maintained the physical barriers complained of, and failed
3 to remove these barriers, and have failed to provide properly accessible facilities, including but
4 not limited to those previously noted hereinabove, as required by state and federal law. On
5 information and belief, Defendants have ignored complaints about the lack of proper disabled
6 access by Plaintiff and by other disabled persons. In particular, on information and belief, the
7 corporate decision-makers of Defendants decided not to timely respond to the local staff's request
8 to improve disabled access to the doors of the facility, causing Plaintiff's damages. Defendants
9 have continued their illegal and discriminatory practices despite actual knowledge that persons
10 with physical mobility disabilities may attempt to patronize the subject fitness center and
11 encounter illegal barriers which deny them full and equal access when they do so.

12 29. At all times herein mentioned, Defendants knew, or in the exercise of reasonable
13 diligence should have known, that their barriers and practices at the subject facilities violated
14 disabled access requirements and standards, and would have a discriminatory effect upon Plaintiff
15 and upon other physically disabled persons, but Defendants have failed to rectify the violations,
16 and presently continue a course of conduct of maintaining architectural and policy barriers that
17 discriminate against Plaintiff and similarly situated disabled persons. For the foregoing reasons,
18 Plaintiff alleges that an award of statutory treble damages is appropriate.

19 30. **FEES AND COSTS:** As a result of Defendants' acts, omissions, and conduct,
20 Plaintiff has been required to incur attorney fees, litigation expenses, and costs as provided by
21 statute, in order to enforce Plaintiff's rights and to enforce provisions of the law protecting access
22 for disabled persons and prohibiting discrimination against disabled persons. Plaintiff therefore
23 seeks recovery of all reasonable attorney fees, litigation expenses, and costs, pursuant to the
24 provisions of Civil Code sections 54.3 and 55, and California Health & Safety Code section
25 19953. Additionally, Plaintiff's lawsuit is intended to require that Defendants make their
26 facilities accessible to all disabled members of the public, justifying "public interest" attorney
27 fees, litigation expenses and costs pursuant to the provisions of California Code of Civil
28 Procedure section 1021.5 and other applicable law.

1 WHEREFORE, Plaintiff prays for damages and injunctive relief as hereinafter stated.

2
3 **SECOND CAUSE OF ACTION:**
4 **VIOLATION OF CALIFORNIA LAW INCLUDING: THE UNRUH ACT, CIVIL CODE**
5 **SECTIONS 51 AND 52, AND THE AMERICANS WITH DISABILITIES ACT AS**
6 **INCORPORATED**
7 **BY CIVIL CODE SECTION 51(f)**

8 31. Plaintiff re-pleads and incorporates by reference, as if fully set forth hereafter, the
9 factual allegations contained in Paragraphs 1 through 30 of this Complaint and incorporates them
10 herein as if separately re-pleaded.

11 32. At all times relevant to this complaint, California Civil Code section 51 has
12 provided that physically disabled persons are free and equal citizens of the state, regardless of
13 medical condition or disability:

14 All persons within the jurisdiction of this state are free and equal, and no matter
15 what their sex, race, color, religion, ancestry, national origin, disability, or medical
16 condition are entitled to the full and equal accommodations, advantages, facilities,
17 privileges, or services in all business establishments of every kind whatsoever.

18 Civil Code § 51(b). [Emphasis added.]

19 33. California Civil Code section 52 provides that the discrimination by Defendants
20 against Plaintiff on the basis of her disability constitutes a violation of the general anti-
21 discrimination provisions of sections 51 and 52.

22 34. Each of Defendants' discriminatory acts or omissions constitutes a separate and
23 distinct violation of California Civil Code section 52, which provides that:

24 Whoever denies, aids or incites a denial, or makes any discrimination or distinction
25 contrary to section 51, 51.5, or 51.6 is liable for each and every offense for the
26 actual damages, and any amount that may be determined by a jury, or a court sitting
27 without a jury, up to a maximum of three times the amount of actual damage but in
28 no case less than four thousand dollars (\$4,000), and any attorney's fees that may
be determined by the court in addition thereto, suffered by any person denied the
rights provided in Section 51, 51.5, or 51.6.

35. Any violation of the Americans with Disabilities Act of 1990 constitutes a
violation of California Civil Code section 51(f), thus independently justifying an award of
damages and injunctive relief pursuant to California law, including Civil Code section 52. Per
Civil Code section 51(f), "A violation of the right of any individual under the Americans with

1 Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.”

2 36. The actions and omissions of Defendants as herein alleged constitute a denial of
3 access to and use of the described public facilities by physically disabled persons within the
4 meaning of California Civil Code sections 51 and 52. As a proximate result of Defendants’
5 action and omissions, Defendants have discriminated against Plaintiff in violation of Civil Code
6 sections 51 and 52, and are responsible for statutory, compensatory and treble damages to
7 Plaintiff, according to proof.

8 37. **FEES AND COSTS:** As a result of Defendants’ acts, omissions and conduct,
9 Plaintiff has been required to incur attorney fees, litigation expenses and costs as provided by
10 statute in order to enforce Plaintiff’s rights and to enforce provisions of law protecting access for
11 disabled persons and prohibiting discrimination against disabled persons. Plaintiff therefore
12 seeks recovery of all reasonable attorney fees, litigation expenses and costs pursuant to the
13 provisions of California Civil Code sections 51 and 52. Additionally, Plaintiff’s lawsuit is
14 intended to require that Defendants make their facilities and policies accessible to all disabled
15 members of the public, justifying “public interest” attorney fees, litigation expenses and costs
16 pursuant to the provisions of California Code of Civil Procedure section 1021.5 and other
17 applicable law.

18 WHEREFORE, Plaintiff prays for damages and injunctive relief as hereinafter
19 stated.

20
21 **THIRD CAUSE OF ACTION:**
22 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**
42 USC §§ 12101 *et seq*

23 38. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein,
24 the allegations contained in Paragraphs 1 through 37 of this Complaint and incorporates them
25 herein as if separately re-pleaded.

26 39. In 1990 the United States Congress made findings that laws were needed to more
27 fully protect “some 43,000,000 Americans [with] one or more physical or mental disabilities;”
28 that “historically, society has tended to isolate and segregate individuals with disabilities;” that

1 “such forms of discrimination against individuals with disabilities continue to be a serious and
2 pervasive social problem;” that “the Nation’s proper goals regarding individuals with disabilities
3 are to assure equality of opportunity, full participation, independent living, and economic self-
4 sufficiency for such individuals;” and that “the continuing existence of unfair and unnecessary
5 discrimination and prejudice denies people with disabilities the opportunity to compete on an
6 equal basis and to pursue those opportunities for which our free society is justifiably famous...”
7 42 U.S.C. §12101.

8 40. Plaintiff is a qualified individual with a disability as defined in the Rehabilitation
9 Act and in the Americans with Disabilities Act of 1990.

10 41. In passing the Americans with Disabilities Act of 1990 (hereinafter “ADA”),
11 Congress stated as its purpose:

12 It is the purpose of this Act

13 (1) to provide a clear and comprehensive national mandate for the elimination of
14 discrimination against individuals with disabilities;

15 (2) to provide clear, strong, consistent, enforceable standards addressing discrimination
16 against individuals with disabilities;

17 (3) to ensure that the Federal Government plays a central role in enforcing the standards
18 established in this Act on behalf of individuals with disabilities; and

19 (4) to invoke the sweep of congressional authority, including the power to enforce the
20 fourteenth amendment and to regulate commerce, in order to address the major areas of
21 discrimination faced day-to-day by people with disabilities.

22 42 USC § 12101(b).

23 42. As part of the ADA, Congress passed “Title III - Public Accommodations and
24 Services Operated by Private Entities” (42 USC § 12181 *et seq.*). The subject property and
25 facility is one of the “private entities” which are considered “public accommodations” for
26 purposes of this title, which includes but is not limited to any “hardware store, shopping center or
27 other sales or rental establishment,” (42 USC § 12181(7)(E)); any “pharmacy, insurance
28 office...or other service establishment” (42 USC § 12181(7)(F)); any “amusement park or other
place of recreation(42 USC § 12181(7)(I)); and any “gymnasium, health spa...or other place of
exercise of recreation” (42 USC § 12181(7)(L)).

1 43. The ADA states that “No individual shall be discriminated against on the basis of
2 disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages,
3 or accommodations of any place of public accommodation by any person who owns, leases, or
4 leases to, or operates a place of public accommodation.” 42 U.S.C. § 12182. The specific
5 prohibitions against discrimination include, but are not limited to the following:

6 § 12182(b)(1)(A)(ii): “Participation in Unequal Benefit. - It shall be discriminatory to afford an
7 individual or class of individuals, on the basis of a disability or disabilities of such individual or
8 class, directly, or through contractual, licensing, or other arrangements, with the opportunity to
9 participate in or benefit from a good, service, facility, privilege, advantage, or accommodation
10 that is not equal to that afforded to other individuals.”

11 § 12182(b)(2)(A)(ii): “a failure to make reasonable modifications in policies, practices, or
12 procedures when such modifications are necessary to afford such goods, services, facilities,
13 privileges, advantages, or accommodations to individuals with disabilities...;”

14 § 12182(b)(2)(A)(iii): “a failure to take such steps as may be necessary to ensure that no
15 individual with a disability is excluded, denied service, segregated, or otherwise treated
16 differently than other individuals because of the absence of auxiliary aids and services...;”

17 § 12182(b)(2)(A)(iv): “a failure to remove architectural barriers, and communication barriers that
18 are structural in nature, in existing facilities... where such removal is readily achievable;”

19 § 12182(b)(2)(A)(v): “where an entity can demonstrate that the removal of a barrier under clause
20 (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges,
21 advantages, or accommodations available through alternative methods if such methods are readily
22 achievable.”

23 The acts and omissions of Defendants set forth herein were in violation of Plaintiff’s rights under
24 the ADA and the regulations promulgated thereunder, 28 C.F.R. Part 36 *et seq.*

25 44. The removal of each of the physical barriers complained of by Plaintiff as
26 hereinabove alleged, were at all times herein mentioned “readily achievable” under the standards
27 of sections 12181 and 12182 of the ADA. As noted hereinabove, removal of each and every one
28 of the architectural and/or policy barriers complained of herein were already required under

1 California law. Further, on information and belief, alterations, structural repairs or additions
2 since January 26, 1993, have also independently triggered requirements for removal of barriers to
3 access for disabled persons per section 12183 of the ADA. In the event that removal of any
4 barrier is found to be “not readily achievable,” Defendants still violated the ADA, per
5 section 12182(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and
6 accommodations through alternative methods that were “readily achievable.”

7 45. On information and belief, as of the dates of Plaintiff’s encounters at the premises
8 and as of the filing of this Complaint, Defendants’ actions, policies, and physical premises have
9 denied and continue to deny full and equal access to Plaintiff and to other mobility disabled
10 persons in other respects, which violate Plaintiff’s right to full and equal access and which
11 discriminate against Plaintiff on the basis of her disabilities, thus wrongfully denying to Plaintiff
12 the full and equal enjoyment of the goods, services, facilities, privileges, advantages and
13 accommodations, in violation of 42 U.S.C. sections 12182 and 12183 of the ADA.

14 46. Defendants’ actions continue to deny Plaintiff’s rights to full and equal access by
15 deterring Plaintiff from patronizing this fitness center as often as she would like and
16 discriminated and continue to discriminate against her on the basis of her disabilities, thus
17 wrongfully denying to Plaintiff the full and equal enjoyment of Defendants’ goods, services,
18 facilities, privileges, advantages and accommodations, in violation of section 12182 of the ADA.
19 42 U.S.C. § 12182.

20 47. Pursuant to the Americans with Disabilities Act, 42 U.S.C. sections 12188 *et seq.*,
21 Plaintiff MARVA SAMUEL is entitled to the remedies and procedures set forth in section 204(a)
22 of the Civil Rights Act of 1964, 42 USC 2000(a)-3(a), as Plaintiff is being subjected to
23 discrimination on the basis of her disabilities in violation of sections 12182 and 12183 of this
24 title. On information and belief, Defendants have continued to violate the law and deny the rights
25 of Plaintiff and other disabled persons to “full and equal” access to this public accommodation
26 since on or before Plaintiff’s encounters. Pursuant to section 12188(a)(2)

27 [i]n cases of violations of § 12182(b)(2)(A)(iv) and § 12183(a)... injunctive relief
28 shall include an order to alter facilities to make such facilities readily accessible to
and usable by individuals with disabilities to the extent required by this title. Where

1 appropriate, injunctive relief shall also include requiring the provision of an
2 auxiliary aid or service, modification of a policy, or provision of alternative
methods, to the extent required by this title. [Emphasis added.]

3 48. Plaintiff seeks relief pursuant to remedies set forth in section 204(a) of the Civil
4 Rights Act of 1964 (42 USC 2000(a)-3(a)), and pursuant to Federal Regulations adopted to
5 implement the Americans with Disabilities Act of 1990. Plaintiff MARVA SAMUEL is a
6 qualified disabled person for purposes of section 12188(a) of the ADA who is being subjected to
7 discrimination on the basis of disability in violation of Title III and who has reasonable grounds
8 for believing she will be subjected to such discrimination each time that she may use the property
9 and premises, or attempt to patronize this fitness center, in light of Defendants' policies and
10 physical premises barriers.

11 WHEREFORE, Plaintiff requests relief as outlined below.

12 PRAYER

13
14 Plaintiff has no adequate remedy at law to redress the wrongs suffered as set forth in this
15 Complaint. Plaintiff has suffered and will continue to suffer irreparable injury as a result of the
16 unlawful acts, omissions, policies, and practices of the Defendants as alleged herein, unless
17 Plaintiff is granted the relief she requests. Plaintiff and Defendants have an actual controversy
18 and opposing legal positions as to Defendants' violations of the laws of the United States and the
19 State of California. The need for relief is critical because the rights at issue are paramount under
20 the laws of the United States and the State of California.

21 WHEREFORE, Plaintiff MARVA SAMUEL prays for judgment and the following
22 specific relief against Defendants:

23 1. Issue a preliminary and permanent injunction directing Defendants as current
24 owners, operators, lessors, and/or lessees of the subject property and premises to modify the
25 above described property, premises, policies and related facilities to provide full and equal access
26 to all persons, including persons with physical disabilities; and issue a preliminary and permanent
27 injunction pursuant to ADA section 12188(a) and state law directing Defendants to provide
28 facilities usable by Plaintiff and similarly situated persons with disabilities, and which provide

1 full and equal access, as required by law, and to maintain such accessible facilities once they are
2 provided; to cease any discriminatory policies, including misrepresenting that inaccessible
3 facilities are in fact “accessible”; and to train Defendants’ employees and agents in how to
4 recognize disabled persons and accommodate their rights and needs;

5 2. Retain jurisdiction over the Defendants until such time as the Court is satisfied that
6 Defendants’ unlawful policies, practices, acts and omissions, and maintenance of physically
7 inaccessible public facilities and policies as complained of herein no longer occur, and cannot
8 recur;

9 3. Award to Plaintiff all appropriate damages, including but not limited to statutory
10 damages, general damages, and treble damages in amounts within the jurisdiction of the Court, all
11 according to proof;

12 4. Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and
13 costs of this proceeding as provided by law;

14 5. Award prejudgment interest pursuant to Civil Code section 3291; and

15 6. Grant such other and further relief as this Court may deem just and proper.

16 Date: September 21, 2018

REIN & CLEFTON

17
18 /s/ Paul L. Rein
19 By PAUL L. REIN, Esq.
20 Attorney for Plaintiff
MARVA SAMUEL

21 **JURY DEMAND**

22 Plaintiff hereby demands a trial by jury for all claims for which a jury is permitted.
23

24 Date: September 21, 2018

REIN & CLEFTON

25
26 /s/ Paul L. Rein
27 By PAUL L. REIN, Esq.
28 Attorney for Plaintiff
MARVA SAMUEL